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AREA LEGAL JURISDICTION--A CURE WORSE THAN THE ILLNESS?

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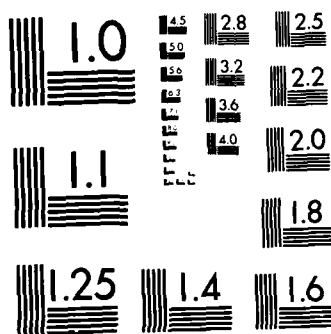
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STUDENT ESSAY

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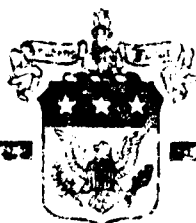
AREA LEGAL JURISDICTION--A CURE WORSE THAN THE ILLNESS?

BY

COLONEL R. DENNIS DUFFIE, AGC

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US ARMY WAR COLLEGE, CARLISLE BARRACKS, PENNSYLVANIA

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AREA LEGAL JURISDICTION -- A CURE WORSE THAN THE ILLNESS?

INDIVIDUAL ESSAY

by

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ABSTRACT

AUTHOR: R. Dennis Duffie, COL, AGC
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Within USAREUR, combat arms restationing decisions over the years together with the correlative peacetime support plans developed by combat support and service support units have resulted in the breakup and dispersion of support units throughout the theater -- squads separated from platoons, platoons from companies, companies from battalions, and battalions from their parent brigades. Notwithstanding this physical separation, virtually all traditional command functions applicable to these units have essentially remained in straight command channels, the only major exception being the administration of military justice which is currently administered strictly on a geographical area basis with essentially the "nearest" company and battalion commanders exercising exclusive legal jurisdiction over all soldiers performing duties within their respective areas of responsibility. The advocates of this arrangement presume both fair and efficient justice. In fact, administration is typically cumbersome, soldiers and commanders are frustrated and disillusioned with the process, and the resultant decoupling of the actual chain-of-command's ability to both reward and punish its soldiers as deemed appropriate all point to an urgent need to reexamine and reshape the current area legal jurisdiction system in USAREUR. The authority to administer nonjudicial punishment and to impose associated administrative sanctions must be returned to the chain-of-command, regardless of unit dispersion. The area legal jurisdiction apparatus should remain in place, but only to administer to criminal behavior and courts-martial within the USAREUR military communities.

"Don't fix it if it ain't broke!" Contemporary military jargon? Indeed. Profound policy guidance for high-level defense officials now wrestling with today's most complex military issues? Of course not. But good advice, nonetheless, for most Army commanders and supporting staff officers in the field who are constantly bombarded with every-day policy and operational issues demanding decisions which immediately impact upon the officers, NCOs, and soldiers in their respective units. Well, perhaps equally sound advice for those of us in the latter category might be the following: "unfix it -- if it wasn't really broken until it was fixed in the first place!"

Convincing the Army hierarchy in Europe that the preceding might even be good legal advice and that the "Area Legal Jurisdiction System" operative today throughout USAREUR (United States Army Europe) indeed represents a "fix" of the '70s now desperately in need of a measure of "unfixing" in the '80s (or in other words, that today's legal system in USAREUR constitutes a "cure worse than the original illness") -- promises to be no easy task. Nonetheless, such an undertaking would clearly serve the best interests of all concerned in that it might ultimately foster the return and institutionalization of a more practical and more traditional system of legal jurisdiction within the USAREUR Theater -- precisely the motives of this author.

The area legal jurisdiction system now well established in Europe is promulgated by USAREUR Supplement 1 to AR 27-10 (Military Justice) -- more later. In theory, it's quite a simple concept. The administration of military justice throughout Europe is accomplished on a geographical area basis and largely irrespective of traditional military command

lines -- i.e., where you "work" is where you are "disciplined." In practice, it is also quite simple, quick, and effective, at least for many. For countless others, however, the administration of military justice on an area basis constitutes nothing less than a sheer nightmare. Complex, cumbersome, convoluted, confusing, marginally effective at best. And yet it seems that the collective concerns and anxieties of the commanders and soldiers so adversely affected by the USAREUR military justice system now in vogue have either been inadequately expressed, are largely being ignored, or that all concerned are seemingly mesmerized by the area legal jurisdiction process and rather content to do their legal business by clinging to the status-quo (and not rocking the legal boat). Accordingly, it would appear that a glance at the historical impetus behind today's system, together with a more comprehensive analysis of its real and potential adverse consequences is essential. Let's begin.

Well documented and widely accepted is the notion that the Vietnam War imposed enormous and severe stresses on the Army, its soldiers and leadership. On the one hand, the draft was bolstering the ranks of the Army by harvesting enormous quantities of individuals as manpower for temporary use in Southeast Asia. On the other hand, however, the US President and Congress were simply never quite able to appropriately complement that effort by teaming up, mustering the US national will, and fully mobilizing the nation's powerful and plentiful reserve component forces to perhaps hasten the conclusion of the war, and at the same time, lessen the strain on the active forces -- forces which were not just fighting skirmishes on all sides in Vietnam, but concurrently training hard and "fighting" wars of deterrence on all sides by

upholding US treaty commitments elsewhere around the globe as well -- particularly in Europe (NATO).

And, of course, Vietnam was a "12-months-at-a-clip" war which saw both the United States and specifically Europe serving as the principal sustaining bases for thousands of Vietnam-bound career soldiers, and NCOs, and officers who regularly embarked from Europe on involuntary, repetitive, second, third, and fourth one-year combat tours. Predictably, such enormous personnel turbulence across the MOS and grade spectrum in the USAREUR-based units (that is the incessant ebb and flow of USAREUR officers, NCOs, and soldiers) did little to mold the unit integrity, cohesion, stability, esprit, and comraderie so essential for maintaining well disciplined, high-performance, combat-ready units in the USAREUR command.

Moreover, as a microcosm of the United States, military units in Europe, too, were seriously plagued by the contemporary social ills then tearing at the very fabric of American society -- black/white racism, drug and alcohol abuse, and the over-arching anti-draft/anti-military themes to cite a few. It's no wonder, then, that the resultant high incidence of indiscipline among U.S. soldiers stationed in Europe was bad and getting progressively worse. Neither is it surprising that the USAREUR leadership should begin to look for new and innovative methods to blunt the ever-increasing rate of soldier indiscipline, to treat the underlying causes, and to more efficiently impose military discipline when warranted.

And so at about this same time in the early '70s, a new support system began to emerge in Europe -- the USAREUR "Military Community" system. Whereas, historically, USAREUR military units had rigidly

adhered to their established vertical chains-of-command in virtually all matters, it was increasingly noted that vast physical dispersion of combat Army units, and especially their affiliated combat support and service support units, severely complicated command-wide efforts to "vertically" implement their many command-wide programs -- especially those designed to combat the rising soldier indiscipline previously mentioned. More importantly, it was noted that this same physical dispersion between and within units, i.e., squads separated geographically from their platoons, platoons from companies, companies from battalions, and brigades from their parent divisions, also complicated command-wide efforts to impose discipline and to administer military justice to "deserving" soldiers. With the advent of the new military community system, it was envisioned that the various community commanders and their supporting community staffs would henceforth be appropriately resourced and configured to manage the collective community affairs of the tenant unit soldiers and family members resident in each community -- today a viable, well-established concept which is generally acknowledged to be functioning well throughout USAREUR.

As a result of the early success of this initiative, combat, combat support, and combat service support unit commanders at every echelon within virtually every community were soon able to avail themselves of the local community resources. Thus, irrespective of shoulder patch, parent unit affiliation, physical location within the Federal Republic of Germany, official "rating" channels, or wartime support relationships, "isolated" platoon leaders, company commanders, and battalion commanders were able to consult authorities in their local community apparatus and refer unit soldiers and families to local

community officials for direct support assistance in virtually all matters -- personnel, finance, postal, medical, dental, social, family housing, etc. And to facilitate this arrangement even further, many of the combat support and service support organizations throughout the USAREUR Theater were obligated to make numerous special accommodations and develop reciprocal peacetime support arrangements in order to be able to extend their services to community personnel and tenant units normally supported elsewhere within their respective chains-of-command.

Rounding out the list of myriad responsibilities accruing to the USAREUR community commanders were two particularly unique and complementary functions -- community law enforcement and the administration of military justice. And while community commanders were conscientiously endeavoring to apply their community resources to the resolution of the contemporary soldier problems prevalent in Europe during the Vietnam decade, so too were they determined to create wholesome and safe environments for their community residents. In a supportive gesture, Headquarters USAREUR soon revised its existing officer evaluation reporting policy guidance so as to require the implementation of "dual-rating" evaluation schemes within all USAREUR communities. Under this policy (still in effect today), community commanders were finally empowered with authority fully commensurate with their responsibilities in that they were now required to render independent written OER performance evaluations on all senior tenant unit commanders whose units/commands were garrisoned in their respective communities. Affected commanders would actually receive two OERs for each rating period, one from their actual chain-of-command rating officials, and another in the form of a letter report rendered by the community

commander, and both reports would be forwarded for joint and permanent filing at Department of the Army. And in light of this substantive change in OER policy, the ability of the USAREUR community commanders to positively influence law enforcement activities and soldier discipline within their communities had become readily apparent to all concerned.

It was apparently at this juncture, however, that the first major stumbling block was encountered by community commanders as they became more and more involved in community legal affairs and issues pertinent to military justice -- i.e., the actual mechanics involved and jurisdictional issues surrounding the administration of military justice.

For two centuries, military justice matters had essentially been accomplished in straight, command-line channels with company and battalion commanders exclusively responsible for their assigned personnel and imposing disciplinary measures whenever and wherever such action was warranted -- a normal command function quite naturally cherished and jealously guarded by all commanders. In Europe, however, the enormous unit dispersion factor meant that soldiers or commanders might have to "travel" to confront one another over a legal/military justice matter. It also meant that "justice" might be somewhat delayed, or rendered by a company or battalion commander stationed in a community other than the one in which an affected soldier actually lived or performed his military duties. Moreover, it meant that the affected soldier might have to miss training, or that he might experience a traffic mishap on the road, or that he might ultimately receive punishment in some fashion "different" from that "typically" received by other similar offenders in the soldier's own community -- presumably all good reasons for efficiency-minded USAREUR legal planners to promulgate a major addition

to Army policy governing the administration of military justice within USAREUR, i.e., USAREUR Supplement 1 to AR 27-10 (Military Justice).

In its present configuration (1 December 1983), USAREUR Supplement 1 to AR 27-10 provides 42 pages of "additional policy guidance and procedures to govern the administration of military justice in USAREUR" -- i.e., 42 pages of supplemental guidance to the existing, 104-page, basic regulation. Appendix E (Military Justice Related Policy and Procedures) to the USAREUR Supplement specifically introduces the area legal jurisdiction concept to the USAREUR Theater by prescribing 13 General Courts Martial (GCM) jurisdictions within the command -- namely jurisdictions for the CINCUSAREUR himself; his two Corps Commanders (V and VII); the Commanders of the 21st Support Command, US Army Berlin, US Army Southern European Task Force, and the 32d Army Air Defense Command; and finally each of the six Division/Division(-) Commanders in USAREUR (the 1st, 3d, and 8th Infantry Divisions and the 1st, 2d, and 3d Armored Divisions).

Appendix E further delineates "area" as opposed to "command line" jurisdictional boundaries for each of the designated 13 GCM authorities. The following description of the VII Corps Commander's GCM boundary is illustrative: "The Commander, VII Corps, will be the GCM convening authority for all troops stationed in the Germany area (excluding the area of the 1st Infantry Division Forward) inclosed by an imaginary line beginning at Bensheim then proceeding south along Highway 3 to Rastatt, then a straight line due west to the Rhine River, then south along the Rhine River to Basel, Switzerland, then east and north along the German border to the intersection of the German border and the Donau River, then northwest along the Donau River to Strabing, then a straight line

investigation into her allegations of discrimination and sexual harassment.

The following day, the Battalion Commander further "counsels" SP5 Doe; advises her of his intent to approve the pending bar-to-reenlistment, to remove her from the Battalion's E-6 promotion standing list, and to suspend her security clearance and access to classified material; inquiries into her allegations about discrimination and sexual harassment on the job; and prepares a formal counseling statement for the record; mentions the potential impact of her current and previous incidents on her "career" in general, e.g., enlisted efficiency report, Good Conduct Medal, end-of-tour award, etc. And when asked by Specialist Doe about his intentions regarding the pending Field-Grade Article 15 (i.e., reduction in grade, forfeiture of pay, extra duty, and/or restriction), he mentions the effects of the USAREUR legal jurisdiction system and explains that those decisions won't be his inasmuch as the Article 15 hearing and any resultant decisions about punishment will rest exclusively with the designated infantry battalion commander in her military community of Boeblingen! SP5 Doe asks who? And why? And her Battalion Commander's response is difficult and unacceptable.

Later in the week, SP5 Doe's Article 15 hearing is conducted in Boeblingen by the appropriate infantry battalion commander. The Battalion Commander privately confesses his "ignorance" of the situation, the soldier, and her unit in general. In fact, it's his first disciplinary action every involving a female soldier (the women's combat exclusion policy applies in his unit). After careful consideration of the facts and circumstances involved, and the recommendations for some

dispatched with a vehicle and driver from the motor pool, picks up SP5 Doe from the MPs and returns.

The next morning, the Company Commander advises Doe of her rights (which she waives) and proceeds with his "commander's preliminary inquiry." Doe admits to a persistent drinking problem, to being fully intoxicated the night before, and unsuccessfully attempting to drive to a club in downtown Stuttgart at 0200 after the Roeblingen NCO Club had closed. She also expresses complete dissatisfaction with her job -- due, in part, to discrimination and sexual harassment in the office.

The Company Commander directs urinalysis testing (potential drug abuse); orders a BAT; withdraws Doe's pass privileges; refers her to the Community Counselling Center for alcohol abuse evaluation and counselling; prepares a written request that she receive the General Officer letter of reprimand now mandated for these offenses; retains her USAREUR operator's license and forwards a recommendation to the Battalion Commander to revoke her driver's license due to her BAT refusal; retains the "Class VI" portion of her ration card; prepares a formal, written counselling statement which advises Doe of the potential administrative elimination consequences of her misconduct; submits a recommendation for imposition of field-grade nonjudicial punishment (driving while intoxicated); initiates a bar-to-reenlistment (her second recent incident of misconduct); initiates a recommendation to remove her from the Battalion's E-6 promotion standing list; arranges for legal counselling requested by Doe; submits the necessary "flagging action"/suspension of favorable personnel actions paperwork; directs a temporary internal reassignment action for her in the office; and commences a rigorous

comment by any of the "area" company or battalion commanders responsible for the administration of military justice in these organizations under the USAREUR area legal jurisdiction system. Their involvement in the 38th P&A, or in any other similarly dispersed organization, only begins when a member of the unit has violated the Uniform Code of Military Justice. And the nature and extent of their involvement from start to finish is typically limited to the conduct of a single Article 15 hearing and the ultimate imposition of nonjudicial punishment, or referral of the case to the appropriate area courts-martial convening authority. Little more. And no follow-up.

A notional illustration and comparison of the usual lopsided involvement by the actual chain-of-command versus that of the designated area commander who possesses the legal jurisdiction is as reflected below:

• Military Police Blotter Entry (Stuttgart, Germany)

SP5(P) JoAnn Doe (Black/Female), Boeblingen Composite Team 198th PSC, 38th P&A Battalion; service member apprehended by MPs at 0230 Saturday morning for speeding/erratic driving; alcohol involved; blood-alcohol test refused; unit notified.

• Actions by the 38th P&A Battalion/198th PSC

Charge-of-Quarters (CQ) from the 198th PSC receives phone call from the MPs at 0230. CQ annotates his duty log and notifies the First Sergeant -- who notifies the Motor Sergeant, the Company Commander, and the Battalion Commander Sergeant Major. The Company Commander notifies the Battalion Commander of the incident -- and advises that no "Serious Incident Report" (SIR) need be filed. The Company Executive Officer is

there just isn't any USAREUR supplement pertinent to the administration of "atta-boys" on a geographical area basis!

Within the 38th P&A, and most certainly within any USAREUR battalion which finds itself dispersed in two or more locations in the Federal Republic of Germany, very special efforts to devote countless on and off-duty hours are selflessly made by the officers and NCOs within the Battalion's chain-of-command in order to counteract the dispersion factor and draw the organization "together" -- loving and caring gestures for the unit's soldiers and families, and innovative efforts to foster cohesion and stability. Keeping things in perspective, it must be remembered that despite physical dispersion, it's still these real battalion and company commanders, and their real command sergeants major and first sergeants who are both at home station and regularly on-the-road conducting battalion and company business in USAREUR as usual -- morning reveille, physical training, details, police call, breakfast, barracks inspections, first formation, sick call, and work call; on-the-job training, prime-time training, and skill qualification tests; and monthly readiness tests, quarterly field training exercises, and annual ARTEPs; and "foot-locker" counselling, and efficiency reports; and reenlistment talks and ceremonies; leaves and passes; and promotion boards and soldier-of-the-month boards; and company and battalion sports teams, events, and seasonal tournaments; "open-door" policies and discussions; "equal opportunity" policies, unit councils, and unit affirmative actions plans; Good Conduct Medals, Army Achievement and Army Commendation Medals. Indeed, gripes, complaints, and all manner of positive strokes are all in a day's work for the real chain-of-command. And indeed with no interest, no involvement, and no

expectations, their idiosyncrasies. Intense loyalties exist up and down that chain. That's nothing new. Rather, that's the very essence of the Army and something that's been inculcated in its members by the institution and internalized by its soldiers ever since taking the "oath" and undergoing basic training. Moreover, it's a phenomenon that has been reinforced in every training event and in every unit to which these leaders and followers have been assigned throughout their careers. Commanders take care of their soldiers. Soldiers take their problems to their chain-of-command for resolution. And so when 38th P&A soldiers in Europe find themselves in trouble, but referred for military justice outside of their chain-of-command to company and/or battalion commanders as listed at Figure 2, it's no wonder that they and their fellow unit soldiers invariably feel betrayed, get confused, disappointed, and disillusioned over the process and the bifurcated channels mandated by the Army in Europe for the administration of military justice and associated matters. Neither is it any wonder that as the individuals chiefly responsible for maintaining discipline in the 38th P&A, the leaders in the Battalion's chain-of-command have typically become increasingly concerned and frustrated over the area legal jurisdictional rules under which they have been required to operate, i.e., to relinquish legal jurisdiction to other commanders. Nor is it any wonder that the "area" commanders, themselves, who subsequently inherit the 38th P&A's military justice functions have often been even more frustrated than the 38th P&A commanders and soldiers. After all, in the rewards and punishment equation, these area commanders have only been given responsibility for the latter, whereas the "fun" part (the rewards) has remained under the purview of the "real" commanders, i.e.,

AREA LEGAL JURISDICTION SCHEME
(NONJUDICIAL PUNISHMENT)

<u>38th P&A Battalion Unit</u>	<u>Company-Grade Articles 15</u> <u>Field-Grade Articles 15</u>
HHD/9th Repl Det	Cdr, HHD, 38th P&A Bn Cdr, 38th P&A Bn
261st PSC	Cdr, 261st PSC *Cdr, 237th Engineer Bn
HQ, 198th PSC and Nellingen Comp Tm	Cdr, 198th PSC Cdr, 38th P&A Bn
198th PSC Welcome & Clearance Center	*Cdr, HHC, 6th Area Spt Gp *Cdr, 6th Area Spt Gp
Ludwigsburg Comp Tm 198th PSC	Cdr, Ludwigsburg Comp Tm *Cdr, 4th Transportation Bn
Boeblingen Comp Tm 198th PSC	Cdr, Boeblingen Comp Tm *Cdr, 1/16th Infantry Bn
Goeppingen Comp Tm 198th PSC	*Cdr, USMCA Goeppingen *Cdr, 299th Support Bn
Schwaebisch Gmuend Comp Tm, 198th PSC	*Cdr, HHB, 56th Field Artillery Bde *Cdr, 56th Field Artillery Bde
HQ, 569th PSC and Augsburg Comp Tm	Cdr, 569th PSC *Cdr, 69th Signal Bn
Neu Ulm Comp Tm, 569th PSC	Cdr, Neu Ulm Comp Tm *Cdr, 4/5th Field Artillery Bn
Munich Comp Tm 569th PSC	*Cdr, USMCA Det, Munich *Cdr, Munich Military Community
Bad Toelz Comp Tm 569th PSC	*Cdr, USMCA Det Bad Toelz *Cdr, 10th Special Forces Group
* <u>NOTE:</u> Legal jurisdiction is external to 38th P&A Battalion, and the battalion commander indicated also processes all administra- tive eliminations.	

FIGURE 2

Battalion's soldiers. Who's in charge? A fair question. A simple question. But an extraordinarily complex, if not ridiculous, answer which almost boils down to the following -- not the soldiers' actual company and battalion commanders, but the "nearest" company and battalions commanders (see USAREUR Supplement 1 to AR 27-10, plus several other intervening USAREUR major command supplements to the Army's basic regulation on military justice). The resultant jurisdictional patchwork within the 38th P&A Battalion means, for example, that the imposition of even company and field-grade nonjudicial punishment (Articles 15) for AG (Adjutant General's Corps) soldiers in the Battalion is an uncoordinated, disjointed effort by serving non-38th P&A unit commanders in the ranks of lieutenant through general at company, battalion, and brigade level by officers representing nearly every branch of the Army -- the Combat Engineers in Heilbronn, the Transportation Corps in Ludwigsburg, the Infantry in Boeblingen, the Field Artillery (Pershing) in Schwaebisch Gmuend and Neu Ulm, the Signal Corps in Augsburg, the Military Intelligence in Munich, the Special Forces in Bad Toelz, and even others elsewhere. A breakout of the actual jurisdiction for military justice applicable to the 38th P&A Battalion is provided at Figure 2.

At the very heart of this issue is the fact that every commander and every officer and NCO in the 38th P&A Battalion chain-of-command perfectly understands the Battalion's mission, his role in that mission, and his leadership responsibilities toward his subordinate soldiers. In turn, his soldiers also understand their personal duties and responsibilities in the organization, and to be sure, each of the personalities in their chain-of-command -- their standards, their

DISPOSITION OF 38TH P&A BATTALION UNITS

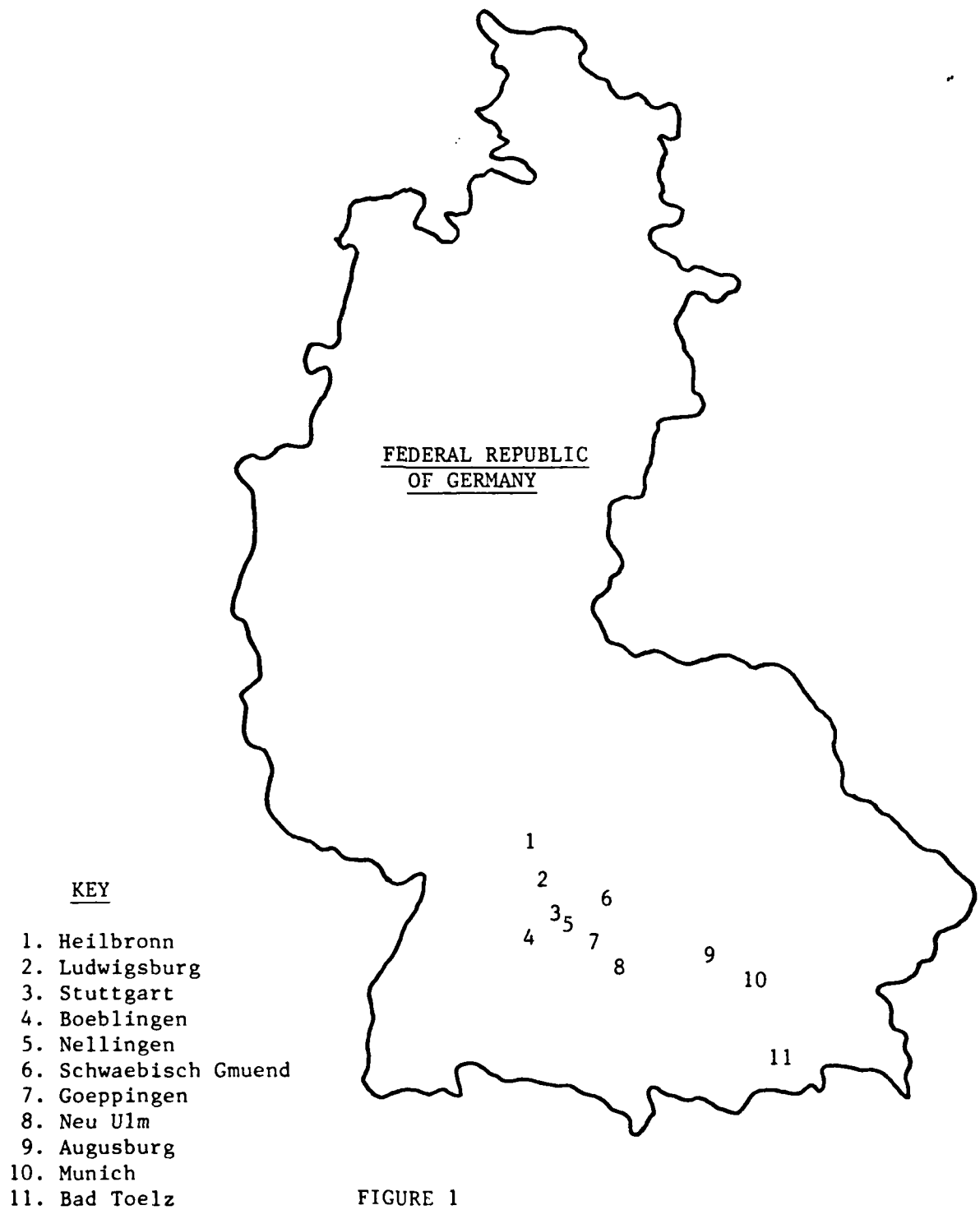


FIGURE 1

to the 38th have been super soldiers. Noncommissioned officers have been equally superb and highly trained through the Army's leadership academies. And the warrant and commissioned officers assigned to the 38th have also been among the most outstanding and both technically and tactically proficient. And all commanders and all first sergeants have been fully "charged-up" via the DA and USAREUR pre-command courses and, upon assignment to the organization, fully committed to doing everything within their power to further build upon the unit's cohesion, pride, esprit, and morale. But soon, however, the stark reality of the 38th P&A Battalion's "dispersion" problem and its attendant legal ramifications brought about by USAREUR's area legal jurisdiction system are brought to bear upon their individual and collective resolve and daily leadership efforts.

As the Corps' only P&A battalion, the 38th and its subordinate personnel service companies (PSCs) are greatly dispersed and necessarily stationed throughout the Corps' rear area in the principal military communities in which both VII Corps and USAREUR soldiers are stationed. The Battalion's headquarters is located at Nellingen near Stuttgart, however, the Battalion's subordinate personnel service companies are headquartered at Nellingen, Heilbronn, and Augsburg as well -- and these three PSCs have essentially each been reconfigured into PSC "Composite Teams" (platoon-sized elements) which have been stationed in the even further outlying military communities and sub-communities of Ludwigsburg, Boeblingen, Stuttgart, Nellingen, Schwaebisch Gmund, Goeppingen, Neu Ulm, Augsburg, Munich, and Bad Toelz (see Figure 1).

Given such vast dispersion, the issues of discipline and military justice become looming concerns for the Battalion's leadership and the

Personnel and Administration Battalion (38th P&A) is one such unit; there are numerous others similarly affected; but the 38th P&A has wrestled with area legal jurisdictional issues for several years; I know; I served as its commander from June 1981 to June 1984.

The 38th P&A is a TOE, go-to-war, unit comprised of nearly 600 officers, noncommissioned officers, and soldiers. Its mission is to provide comprehensive personnel and administrative services to more than 30,000 VII Corps soldiers in war, and to more than 100,000 USAREUR and VII Corps soldiers and family members in peacetime -- services which typically include personnel inprocessing and personnel outprocessing, and everything in between, e.g., personnel management, personnel actions/affairs, personnel records maintenance, strength accounting, replacement operations, casualty reporting, administrative services, SIDPERS, etc. An exhausting "technical" mission in peacetime to be sure, but in peacetime there are also countless Department of the Army, USAREUR, and VII Corps, as well as battalion and company level training and maintenance demands placed upon the 38th P&A Battalion -- annual ARTEPs, quarterly FTXs, monthly alerts and readiness tests, weekly prime-time training, and daily PT to highlight a few.

In order to accomplish its complex peacetime support mission and to concurrently achieve and sustain a high state of combat readiness which ensures that the 38th P&A can indeed execute its war plans and deploy to "GDP," survive, and provide P&A support to VII Corps units on the air-land battlefield is indeed a very special challenge. Accordingly, the 38th P&A has continuously strived to build unprecedented unit cohesion, pride, esprit, and high individual soldier morale as a means to tackle this challenge head-on, and successfully. Soldiers assigned

In consideration of the extraordinary efforts that have gone into the design and implementation of the area legal jurisdiction system within Europe, and in light of the apparent successes enjoyed by this system which have enabled it to endure now for more than a decade, at the very highest levels one might be tempted to conclude that "all is well" and that this system is one which need not be "tampered" with for any reason whatsoever. Well, as alluded to already, nothing could be further from the truth. And it is to convincingly dispell this unfortunate misconception and offer simple but constructive recommendations for revisions to USAREUR's area legal jurisdiction system that the remainder of this paper will be addressed.

At this juncture, a brisk transition from what has been very general up to this point on to the more specific is deemed essential in order to best highlight the very stark contrast between the top-down perceptions and the bottom-up realities of USAREUR's area legal jurisdiction system. Certainly the CINCUSAREUR and the USAREUR Staff Judge Advocate must view the area system as a most efficient, tried and tested legal system which is highly responsive to the needs of the USAREUR command and its countless communities -- affected battalion commanders and their command sergeants major and battalion adjutants, and their subordinate company commanders and first sergeants are united and vociferous (at least among themselves), however, in their disagreement. Within the VII Corps area GCM boundaries, for example, both VII Corps and non-VII Corps battalions and companies are vastly dispersed throughout the area and, therefore, obligated to comply with the bitter medicine prescribed by the USAREUR and VII Corps supplements to AR 27-10 when it comes to administering soldier discipline. The VII Corps' 38th

And now command lines have really become blurred! Mindful of all the legal complexities involved, correctly interpreting and precisely executing USAREUR's guidance relative to the administration of military justice (to include all of the peripheral legal-type actions enumerated above) might appear to be a simply impossible task for USAREUR's 13 GCM authorities and, in turn, for each of their subordinate commands. But perhaps not to be outdone by USAREUR, it would appear that each GCM jurisdiction has indeed opted to develop and publish its own detailed supplement to the basic regulation and USAREUR's supplement thereto. Preliminary research, for example, indicates that both of the USAREUR corps as well as USAREUR's 21st Support Command has each published its own command supplement to further implement area legal jurisdiction within this area GCM boundaries. By and large, these supplements are very similar in nature in that they prescribe inferior courts-martial jurisdictions (i.e., Special and Summary Courts-Martial) within their overall GCM jurisdictions. And whereas the V Corps supplement is somewhat unique by the manner in which it actually mandates the publication of even further implementing directives by each of the V Corps special courts-martial convening authorities, and also includes a provision specifically prohibiting commanders from imposing even nonjudicial punishment (Articles 15) on their own soldiers if these soldiers are stationed outside of the V Corps' GCM boundaries;³ the VII Corps supplement is equally unique by the manner in which special courts-martial/summary courts-martial/Article 15 jurisdictions for every company and larger-sized unit within the VII Corps GCM boundaries is spelled out in a detailed, nine-page appendix to the Corps supplement.⁴

• Authority to draw on personnel resources for implementing the above two functions. And to further clarify the nature and extent of the designated GCM responsibilities, Appendix E to the USAREUR Supplement to AR 27-10 specifies that "military justice" matters include the following:²

- Summary courts-martial, special courts-martial, and GCM jurisdiction.
- UCMJ Article 15 authority over officers and enlisted personnel.
- Discharges under AR 635-200.
- Retention beyond expiration of term of service in connection with court-martial charges or arrest under AR 635-200, paragraph 1-24.
- Reductions in grade under AR 600-200, paragraph 8-11.
- Elimination of officers under AR 635-100, Chapter 5.
- Resignations of officers for the good of the service under AR 635-120.
- Applications for discharge as a conscientious objector under AR 600-43.
- Line of duty determinations under AR 600-33.
- Requests for military personnel before civil courts under AR 600-40.
- Requests for military personnel as witnesses under AR 27-40.
- Reports for survey under AR 735-11, unless other specific designation is made pursuant to AR 735-11.
- Remission or cancellation of indebtedness under AR 600-4.
- Claims under UCMJ, Article 139.
- Other actions that Army regulations or other USAREUR regulations require to be taken by persons exercising GCM authority.

due west to Kelheim, then west along the Donau River to Donauworth, then northwest along Highway 25 to Nordlingen, then a straight line northwest to Rossfeld, then a straight line northeast to Rothenburg ob der Tauber, then northwest along the Tauber River to Lauda, then a straight line west to Wallduern, and northwest along Highway 47 to Bensheim."¹

A neat and clean delineation of the VII Corps Commander's "area" of jurisdiction? Neat, perhaps. But certainly not clean. Ironically, the critical three-word phrase "VII Corps soldiers" is never mentioned or even alluded to anywhere in the boundaries prescribed for the VII Corps Commander's area of jurisdiction. But, then again, are there actually any VII Corps soldiers and units physically stationed outside of these jurisdictional boundaries? Unfortunately, yes. And many at that. And are there some soldiers among these who actually "reside" within the VII Corps boundaries but perform daily duties in units "stationed" outside? Yes again. What about non-VII Corps units and soldiers? Are there any of these "stationed" within the VII Corps jurisdictional boundaries? In fact, too many to enumerate here.

Thus, command lines in Europe begin to blur, but at this juncture it might be useful and instructive to precisely examine the nature and surprisingly enormous scope of the responsibilities specified by USAREUR for the 13 designated GCM authorities. Naturally, courts-martial are the first to come to mind. But in fact, the following functions constitute the principal responsibilities for each GCM authority:

- Responsibilities specified in the Uniform Code of Military Justice (UCMJ) and the Manual for Courts Martial (MCM).
- Authority to promulgate policy and procedures concerning the administration of military justice.

leniency supplied by the 38th P&A and 198th PSC representatives at the hearing, he imposes a reduction in grade, a maximum forfeiture of pay, and 30 days of extra duties and restriction. And at this point, his involvement in this case is completely and irrevocably terminated. SP4 Doe's subsequent appeal is denied (in area jurisdiction channels).

In the days and weeks to follow, the 38th P&A will supervise Doe's performance of extra duties, process the applicable "SIDPERS" transactions, post her Article 15 to the bulletin board, respond to the Inspector General's inquiry into her case, answer the Congressional inquiry, respond favorably to her requests for commanders' "open door" sessions, write her EER, resolve her discrimination and sexual harassment complaints, and nurture her through the alcohol rehabilitation program. And in the event she should later demand a formal "redress of grievance" and submit a "complaint of wrong," the 38th P&A Battalion will process that as well.

The many frustrating dilemmas for both the "real" company and battalion commanders and the corresponding "area" commanders which are underscored by the preceding illustration are not really too unusual and are not peculiar to the battalion formerly commanded by this author. Among those VII Corps units similarly affected by virtue of their vast internal physical dispersion across the depth and breadth of the Corps' GCM boundaries and into the neighboring GCM boundaries are the 14th Military Police Brigade, the 93d Signal Brigade, the 7th Engineer Brigade, and the 2d Support Command (Corps) -- dispersion problems which are mirrored throughout many of the USAREUR major commands such as the 32d Army Air Defense Command, the 56th Field Artillery Brigade, and the

7th Medical Command whose subordinate echelons are even more vastly dispersed throughout all of West Germany.

Within VII Corps, the MP, Signal, and Engineer Brigades and the Corps Support Command (COSCOM) are particularly adversely affected by their physical unit dispersion problem and its attendant area legal jurisdiction ramifications. And although one would assume that solid, internal, command-wide programs are fully operational in these commands as in any other similar Army units, whether dispersed or collocated in a single geographical location, the entire Corps area and its four general courts-martial jurisdictions, are all dotted with individual squads, platoons, companies, and battalions from these four major subordinate commands within the Corps' (non-divisional) structure. The end result is again a hodge-podge of cross-serving area legal jurisdictions as spelled out in the VII Corps Supplement previously mentioned -- and a group of affected commanders whose serious misgivings with the system continue to go unanswered.⁵

From start to finish, the preceding dissertation concerning the many ills of the USAREUR area legal jurisdiction system has been largely assertive in nature and lengthy, subjective, and admittedly unsupported by (I prefer uncontaminated by) countless pages of graphs and charts and statistically significant analyses of special survey data. Rather, the intent has been to transpose to the reader a measure of the same gnawing concern and absolute frustration over the largely self-evident, adverse ramifications of this decade-old system that daily plagues those soldiers and commanders most directly affected -- those at company and battalion level who truly "belong" to but one Army unit, their unit -- regardless of its physical dispersion. In the soldiers' vernacular, the

area legal jurisdiction system "just ain't fair" and it "just ain't right." Their company and battalion commanders' assessment, in the vernacular, is identical. Precisely, it's the principle that's wrong. By way of analogy, the opening paragraph's enjoinder to "unfix it -- if it wasn't really broken until you fixed it in the first place" is largely a plea not to allow "area legal jurisdiction" to forever supplant "unit punishment" in the same manner as "dining facilities" now masquerade as "unit mess halls" and the Army's "unit pay days" have succumbed to the more efficient "check-to-bank" option.

Although already judged as "guilty of conduct prejudicial to good order and discipline" by the author and an array of past colleagues and current classmates who have recently commanded USAREUR organizations with geographically dispersed subordinate units, the USAREUR area legal jurisdiction system and its countless ills nevertheless deserves a more official "grand jury" indictment as a fitting and proper prelude to formal trial, conviction, and sentencing!⁶ And while the CINCUSAREUR ought to sit as the president of the grand jury, its members ought to include a cross-section of representatives from the USAREUR staffs and major commands, as well as a cross-section of representatives from the USAREUR military community/sub-community infrastructure. The "prosecution" ought to consist of a council of adversely affected unit soldiers and their respective chains-of-command and NCO support channels. And "defense" could only be a similar council of representatives from the well entrenched/satisfied-with-the-status-quo legal hierarchy in USAREUR.

Perhaps the best "principal witness/honest broker" in such a proceeding could only be the USAREUR Inspector General together with

selected representatives from his ubiquitous network of major major command IGs and their supporting staffs. Accordingly, as a first step in validating the essential concerns addressed herein and bringing them to proper and expeditious resolution, it is proposed that the CINCUSAREUR commission his Inspector General to conduct an in-depth review of the current USAREUR area legal jurisdiction system.

Such a study must be broad in scope and entail (perhaps for the first time) a "bottom-to-top" as opposed to the more familiar top-to-bottom analysis of the system. And in particular, such an investigation ought to focus on the consistency and standardization exerted by the USAREUR commands and subordinate major commands and assigned units in implementing the current provisions of the USAREUR Supplement governing area legal jurisdiction within the Theater. More importantly, it must examine the impacts of the system at unit level -- especially within companies with dispersed platoons and squads, and within battalions with dispersed companies. In this regard, the most fertile ground for exploration would consist of USAREUR's most widely dispersed MACOMs such as the 32d Air Defense Command, the 56th Field Artillery Brigade (Pershing), and the 7th Medical Command; and the V and VII Corps' respective P&A Battalions, COSCOMs, and their MP, Signal, and Engineer Brigades; and their Divisional Support Commands as well.

In addition to such a comprehensive study by the USAREUR IG, a number of supporting initiatives would nicely serve to further validate the concerns addressed in this paper. Over the years, many of the USAREUR CINCs have personally hosted monthly or quarterly conferences at Headquarters USAREUR for selected serving battalion and company commanders throughout the command -- i.e., the "CINC's Discussion Group."

Moreover, USAREUR command sergeants major have similarly convened on a periodic basis to discuss "NCO Business" within the command. Finally, the CINCUSAREUR's MACOM Commanders' Conference is a regular occurrence. Each of these forums provides an excellent opportunity to delve into the problems inherent in the USAREUR area legal jurisdiction system, and it is proposed that such an initiative be conducted as a corollary to the USAREUR IG's investigative efforts into this matter.

Finally, the collective experience with the area legal jurisdiction system gained by outgoing commanders and senior noncommissioned officers must not be "lost" in the fog of unit clearance, USAREUR outprocessing, and family port-call procedures for return to the United States upon completion of overseas tours in Germany for these individuals. Valuable insights into the many problems inherent in the system as experienced by these commanders and NCOs and their subordinate soldiers must be captured and retained for analysis by the USAREUR IG in order to more clearly define the problem, assess its magnitude, and structure solutions. Accordingly, it is proposed that a formal requirement be established to either debrief these outgoing leaders with respect to the area legal jurisdiction system, or that special after-action, written assessments be formally required of these individuals as a precondition to their final clearance from the USAREUR command.

Acting as the "Grand Jury" in this matter, the USAREUR IG's investigation into the probable guilt or innocence of the USAREUR area legal jurisdiction system, together with the assessments arrived at by serving commanders and senior NCOs in the "forums" previously cited, and further together with the collective end-of-tour assessments obtained from the outgoing leadership, an "indictment" of the current area legal system

due to its current shortcomings is inevitable. A "guilty plea" and subsequent "conviction" upheld by the CINCUSAREUR can only follow. And although "sentencing" promises to be the most difficult decision of all, one option is particularly attractive.

Integral to that option would be a decision within USAREUR to differentiate between the rather routine, mischievous violations of the Uniform Code of Military Justice that can perhaps best be described as misdemeanors; and those that are truly acts of criminal behavior, or felonies. And then in the case of the everyday misdemeanors, to allow the legally constituted military chain-of-command to exercise exclusive legal jurisdiction in these matters, including any concomitant administrative sanctions deemed appropriate. In other words, inasmuch as the UCMJ specifically provides company and battalion commanders with certain nonjudicial punishment options for minor incidents of misconduct on the part of their soldiers (i.e., company and field-grade Articles 15), USAREUR must decide to allow the actual commander in the actual chain-of-command to exercise exclusive jurisdiction over their soldiers in matters warranting nonjudicial punishment and/or administrative action -- and to do so irrespective of the "stationing" of the soldier or the commander, or the actual "place" of the soldier's infraction. As an aside, under the current USAREUR system, a number of interesting legal predicaments could develop in the illustrative case of SP5 JoAnn Doe. Assuming she resides in military family housing in Stuttgart -- 20 minutes from her company orderly room and the 38th P&A Battalion Headquarters at Nellingen, each of the following infractions would again likely warrant nonjudicial punishment and/or administrative action (e.g., separation under the provisions of AR 635-200) -- currently the

exclusive jurisdiction of the designated infantry battalion commander in Boeblingen where SP5 Doe works/is stationed at the local 38th P&A Battalion MILPO (military personnel office).

- SP5 Doe is negligent in the performance of her office duties in Boeblingen; or is

- Disrespectful in language and deportment to her battalion commander at Nellingen.

- Intentionally damages government property in her quarters in Stuttgart.

- Falls asleep on guard during a company field training exercise at a local training area in Goeppingen.

- Is drunk on duty during a Battalion "ARTEP" in Heilbronn.

Once revised to restore full, exclusive legal jurisdiction to the actual company and battalion commanders in Europe, the resolution of each of the above situations and any others meriting nonjudicial punishment or administrative disposition would be totally resolved within the respective soldier's actual chain-of-command as opposed to introduction into "area" or community channels for disposition by typically reluctant-to-get-involved commanders anyway. And this is as it should be -- rewards and punishment options both in the hands of the actual unit commanders -- company and battalion. Soldiers would accept that. So would the chain-of-command. And so would USAREUR community/sub-community leaders if the rationale for restoration of nonjudicial punishment and administrative actions along straight command lines was provided, and this program was enthusiastically supported from the top down throughout USAREUR.

Whereas the proposed return of jurisdiction for nonjudicial punishment and other administrative sanctions (principally administrative eliminations) to the actual chain-of-command poses no insurmountable problems, a similar decision in criminal matters warranting trial by courts-martial may not be in the best interests of all concerned. In these matters, expeditious processing is indeed critical; investigations at the local level are more complex; numerous material and character witnesses can expect to be called to appear in court; and juries must be constituted. And given that the actual company commander, regardless of his physical location, could conceivably "prefer" charges anyway, it is recommended that, with respect to courts-martial, the current provisions of the USAREUR area legal jurisdiction system remain in effect. Thus, under this more equitably shared arrangement, the end result would be that all USAREUR company and battalion commanders would continue to retain authority to "reward" unit soldiers for noteworthy acts of achievement and service, to administer nonjudicial punishment and/or apply other administrative sanctions when warranted, but continue to relinquish jurisdiction for courts-martial to the respective "area" authorities as is the case at present.

Complex problems typically merit complex solutions. In the case of USAREUR's present area legal jurisdiction system, however, it seems that the complex "cure" for unit dispersion as prescribed more than a decade ago was simply worse in many ways than the original "illness." And although "dispersion" in USAREUR hasn't gotten any better, today's volunteer Army is probably one of the best disciplined our nation has ever known. And as always, its commanders are still responsible for everything their units do or fail to do. And these commanders are

indeed singularly responsible for the state of discipline in their respective organizations. And in USAREUR, incredible efforts to counteract physical dispersion and forge unit cohesion on the part of countless company and battalion commanders can be witnessed daily. Despite these efforts, these commanders have been provided only half the tools required to successfully execute their mission. They can reward -- but they cannot punish. And yet their responsibility for soldier and unit discipline remains unaltered from day-to-day, month-to-month, and year-to-year, i.e., to discipline those unit soldiers physically stationed in the same community as the commander, and to relinquish discipline in all other cases. There have been case-by-case exceptions, but seldom does the USAREUR legal hierarchy advocate such jurisdictional manipulations.

In this the Army's "Year of Leadership," it's time to rethink, restudy, and reshape the USAREUR area legal jurisdiction system. Leave the "area" legal apparatus in place, but let it deal only with the administration of military justice in criminal matters warranting trial by military courts-martial. And terminate its involvement in nonjudicial punishment and the associated administrative matters and reinstate these responsibilities along straight command lines. And in those instances where special arrangements between commanders for individual or unit "attachment" for military justice purposes is absolutely essential, simply allow these commanders to consummate the contracts.

All company and battalion commanders in Europe willingly accept the Chief of Staff's charge to "train, maintain, lead, and care" for their soldiers. Let them reward. And let them punish. That's the Army way. It's the only way.

ENDNOTES

1. USAREUR Supplement 1, 1 December 1983, to Army Regulation 27-10, Military Justice, p. 17.
2. Ibid., p. 15.
3. V Corps Supplement 1, 22 August 1984, to Army Regulation 27-10, Military Justice, p. 5.
4. VII Corps Supplement 1, undated, to Army Regulation 27-10, Military Justice, pp. 14-22.
5. Letter, Office of the Commanding General, Headquarters VII Corps, 22 November 1983, subject: Review of Area Jurisdiction.
6. Discussions/Interviews; Commanders, VII Corps Major Subordinate Commands (October 1983); and Students, United States Army War College, Carlisle, PA (October 1984-April 1985).

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